

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

2013 FEB 11 PM 12:59

PETER OPPENHEIMER  
CLERK US DIST COURT  
WD OF WI

Stan R. Mitchell

(Full name of plaintiff(s))

Case Number:

13 C 0097 BBC

(Supplied by clerk)

VS

Santander Consumer USA  
Cedric Gause

(Full name of defendant(s))

COMPLAINT

A. JURISDICTION

1. Stan R. Mitchell, resides at  
(Plaintiff)

450 E. Davie St., Apt. 210, at Raleigh, NC 27601-2081  
(Address) (City, State)

2. Defendant Santander Consumer USA, INC is employed as  
(Name of First Defendant)

8555 N. Stemmons Fwy, #1000N, Dallas TX 75247  
(Position and Title, if any) at (Address)

3. Defendant Cedric Gause is employed as  
(Name of Second Defendant)

Loss Mitigation Specialist at 8555 N. Stemmons Fwy, #1000N, Dallas TX 75247  
(Position and Title, if any) (Address)

**B. CAUSE OF ACTION.**

On the space provided on the following pages, tell what specific incidents or conversations occurred which led you to believe your constitutional or federal rights have been or are presently being violated. IT IS IMPORTANT THAT THE ALLEGATIONS BE BRIEF BUT SPECIFIC. Do not cite legal authorities, such as earlier court decisions or laws enacted by the legislature or Congress, to support your lawsuit at this early stage of your case.

Santander Consumer USA, Inc. via its agent, Cedric Gause, offered a total settlement package of \$6000 on a 2006 Nissan Altima (VIN#1N4AL11D95C952980) in April 2012.

Upon sending \$4500 of the \$6000 as agreed upon, with intent to make subsequent payments as agreed for the remaining \$1500, Santander Consumer USA, Inc accepted the \$4500 cashier's check and deposited it.

Santander, through its agent, Cedric Gause, then informed me that the settlement deal was no longer valid and they had applied the \$4500 to the original loan value and would be seeking all of the remaining loan value. This was expressly NOT the settlement agreement with which both parties entered into this transaction.

1. The settlement offer was made to Stan R. Mitchell in Watertown, WI in April 2011.
2. Santander filed a lawsuit against Stan R. Mitchell for replevin of the vehicle in question on November 22, 2011 in Jefferson County Circuit Court (11SC1845).
3. In order to avoid the court appearance, it was agreed that \$4500 would be sent to Santander Consumer, exactly in agreement with the previous settlement plan and with the understanding by Stan R. Mitchell that the additional \$1500 would be made in incremental payments.
4. Santander subsequently breached the settlement agreement by applying the \$4500 to the original car loan balance in breach of the agreement. Further discussions were discontinued between the two parties and Santander subsequently repossessed the vehicle in January 2013.
5. Stan R. Mitchell notified Santander Consumer of an impending legal action which would ensue under the Federal Fair Debt Collection Practices Act, §§ 806-808. This claim constitutes that action.

C. REQUEST OR RELIEF

1. I DO request that I be allowed to commence this action without prepayment of fees and costs, or security therefor, pursuant to 28 USC §1915. The attached affidavit of indigency has been completed and is submitted in support of this request for leave to proceed in forma pauperis.

2. In the following space, please indicate exactly what it is you wish this court to do.

Order Santander Consumer USA, Inc. to return the vehicle in question to Complainant as agreed in the settlement offer.

Order Santander Consumer USA, Inc. to return the \$4500 payment as penalty for their intentional "bait and switch" action in which they took the \$4500 and, in bad faith, applied it to car loan in violation of a specific settlement agreement.

Order Santander Consumer USA, Inc. to pay any attorneys fees and other costs associated with this action.

Order Santander Consumer USA, Inc to immediately cease and desist its violations of the Fair Debt Collections Practices Act and assign any penalties as this Court finds appropriate to dissuade future violations of the Act.

Dated this 8<sup>th</sup> day of February, 2013.

Spencer R. Mitchell

450 E. Davie St., Apt. 210

Raleigh, NC 27601-2081

(919)- 244-9546